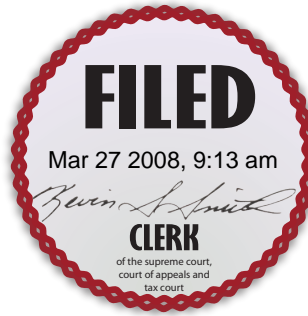


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DARRELL L. HALL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 34A02-0710-CR-881
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No.34C01-0701-FA-12

March 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, Darrell Hall appeals his aggregate sentence of eight years, with two years suspended, for possession of cocaine, a Class C felony, and resisting law enforcement, a Class A misdemeanor. Hall raises the sole issue of whether his sentence is inappropriate given the nature of the offense and his character.¹ Concluding his sentence is not inappropriate, we affirm.

Facts and Procedural History

On January 12, 2007, Hall was a passenger in a vehicle, which officers of the Kokomo Police Department attempted to stop. After the driver crashed the vehicle into a telephone poll, Hall exited the vehicle and attempted to flee on foot. Hall was in possession of a substance later determined to be more than three grams of cocaine.

On January 17, 2007, the State charged Hall with possession of cocaine, a Class A felony,² resisting law enforcement, a Class A misdemeanor, and false informing, a Class A misdemeanor. On September 5, 2007, pursuant to a plea agreement, Hall pled guilty to possession of cocaine as a Class C felony, and resisting law enforcement, a Class A

¹ Hall captions his argument: “The Trial Court Abused its Discretion and Committed Reversible Error Thereby When it Sentenced the Defendant, as Such Sentence Is Inappropriate in Light of the Nature of the Offense and the Character of the Offender.” Appellant’s Brief at 4. Whether the trial court abused its discretion is a separate issue from whether the sentence is inappropriate. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (“Although the trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution ‘authorize independent appellate review and revision of a sentence imposed by the trial court.’” (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on reh’g, 875 N.E.2d 218. In his argument section, Hall makes no argument as to how the trial court abused its discretion. We therefore will address solely whether Hall’s sentence is inappropriate.

² The State charged this count as a Class A felony because Hall was within one thousand feet of a school when he possessed the cocaine. See Ind. Code § 35-48-4-6(b)(2)(B).

misdemeanor. In addition to reducing the possession charge from a Class A felony to a Class C felony, the State dropped the false informing charge.

Also on September 5, the trial court held a sentencing hearing and issued a sentencing order, which states in relevant part:

The Court finds as mitigating circumstances, that the Defendant has entered a plea of guilty but finds said plea agreement calls for the original charge of an A felony, being reduced to a lesser C felony. Court also considers as a mitigating factor, that the defendant has used his time well while incarcerated in an attempt at rehabilitation and to address his issues with drugs and alcohol.

The Court finds as aggravating circumstances, that the defendant has a significant criminal history dating back to 1998 including felony and misdemeanor convictions and finds the defendant was out on bond and on probation when this offense was committed.

Court in considering the mitigating and aggravating circumstances finds as rehabilitation and to deter the defendant from participating in any future criminal activity, finds the imposition of an aggravated sentence, served in part and suspended in part, to be appropriate to be served in a penal facility.

The Court having considered aggravating and mitigating circumstances cited above, the nature and circumstances of the offense, the criminal history of the defendant as well as his character and condition, the risk of such offense recurring, now proceeds to sentencing.

Appellant's Appendix at 115-16. The trial court then sentenced Hall to eight years with two years suspended for possession of cocaine and one year for resisting arrest. The trial court ordered that the sentences were to run concurrently. Hall now appeals.

Discussion and Decision

When reviewing a sentence imposed by the trial court, we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We have authority to “revise sentences when certain

broad conditions are satisfied.” Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the [presumptive or advisory] sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). We must examine both the nature of the offense and the defendant’s character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this inquiry, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. The burden is on the defendant to demonstrate that his sentence is inappropriate. Childress, 848 N.E.2d at 1080.

Hall makes no cogent argument regarding the nature of the offense, merely stating, “The nature of the offenses – C felony possession of cocaine and A misdemeanor resisting law enforcement – were not such as to warrant either the imposition of an aggravated sentence or the imposition of an executed sentence in excess of the statutory minimum of two (2) years.” Appellant’s Br. at 5. Merely identifying the offenses to which Hall pled guilty without explaining what in the nature of these offenses renders Hall’s sentence inappropriate does little to convince this court of the inappropriateness of the sentence. Nothing we find in the record seems to render Hall’s offenses substantially more egregious than the typical acts of possession of cocaine and resisting arrest. However, we note that officers found a handgun in the vehicle, that Hall committed the offense within one thousand feet of a school, and that Hall provided officers with incorrect information regarding either his identity or the identity of the vehicle’s driver.

In regards to Hall's character, Hall has a previous federal conviction of conspiracy to distribute cocaine, for which he was on probation at the time of the instant offenses. It appears that Hall was released from prison roughly three and one half years before he committed the instant offenses. Although Hall has but this one conviction, it is both serious and directly related to the instant offense. See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999) (recognizing that the significance of a defendant's criminal history depends on the gravity, nature, and number of prior offenses as they relate to the instant offense). Hall also indicated that he was a daily cocaine user at the time of his arrest, further demonstrating that Hall was not leading a law-abiding life. See Roney, 872 N.E.2d at 207; Bostick v. State, 804 N.E.2d 218, 225 (Ind. Ct. App. 2004). Also at the time of the instant offenses, Hall was out on bond for pending charges of unlawful possession of a handgun, a Class B felony, and carrying a handgun without a permit, a Class A misdemeanor. See Field v. State, 843 N.E.2d 1008, 1011 (Ind. Ct. App. 2006) (recognizing that a violation of conditions of bond is a valid aggravating circumstance independent of criminal history), trans. denied.

We recognize that while Hall was incarcerated awaiting trial on the instant charges, he completed one rehabilitation program and was participating in a drug and alcohol program. We commend Hall for his attempts at bettering his life. We also recognize that Hall pled guilty, thereby saving the State the expense of conducting a full-blown trial. However, in exchange for this plea, the State reduced one charge from a Class A felony to a Class C felony and dropped a misdemeanor charge. Under these circumstances, Hall's guilty plea has minimal or no effect on our analysis of his character. See Fields v. State, 852 N.E.2d 1030,

1034 (Ind. Ct. App. 2006) (noting that the defendant “received a significant benefit from the plea, and therefore it does not reflect as favorably upon his character as it might otherwise”), trans. denied. However, given the recent, serious, and related nature of Hall’s criminal history, and after giving due consideration to the trial court’s decision, we conclude that Hall has failed to persuade this court that his eight-year sentence, with two years suspended, is inappropriate.

Conclusion

We conclude that Hall’s sentence is not inappropriate given the nature of his offenses and his character.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.